

Decision 02-04-041 April 22, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the County of San Bernardino for an Order authorizing the construction of a public crossing at separated grades across a proposed privately owned spur track to be operated over by the Union Pacific Railroad within the County of San Bernardino, C.P.U.C. Crossing No. 1B-528.6A, D.O.T. No. 921-147-T.

Application 01-10-023
(Filed October 22, 2001)

O P I N I O N

Summary

County of San Bernardino (County) requests authority to construct a new public crossing at separated grades over a proposed privately owned spur track to be operated by Union Pacific Railroad Company (UP) in San Bernardino County.

Discussion

County proposes to construct a new alignment of Valley Boulevard as an overhead at separated grades over the proposed privately owned Kaiser spur track on a new alignment to be operated by UP near the City of Fontana in San Bernardino County. The grade separation overhead is to be a concrete box girders bridge structure on concrete piers and abutments.

Construction of Valley Boulevard overhead at separated grades over the proposed privately owned Kaiser spur track is necessary to meet the increasing

vehicular traffic demands at the existing alignment of Valley Boulevard that connects onto the Interstate (I) 10 Freeway. Closure of the existing Valley Boulevard at-grade spur track crossing, closure of the temporary Valley Boulevard at-grade spur track crossing, and construction of Valley Boulevard overhead grade separation will greatly enhance the safety of the motoring public and train crews and will provide improved vehicular traffic circulation. Upon completion of Valley Boulevard overhead grade separation, the temporary Valley Boulevard at-grade spur track crossing at the new spur track alignment and the existing Valley Boulevard at-grade spur track crossing at the existing spur track alignment will be closed and vacated as part of this project.

Valley Boulevard overhead grade separation will accommodate five traffic lanes westbound and three traffic lanes eastbound. The existing Valley Boulevard consists of two traffic lanes in each direction and crosses an at-grade crossing of a spur track operated by UP. On September 6, 2001, the Commission granted authority under General Order 88-A to UP to relocate the existing Kaiser spur track from its existing alignment, located at the existing Valley Boulevard at-grade spur track crossing, to a proposed new alignment, located at the site of the temporary Valley Boulevard at-grade spur crossing and located 165 feet west of its existing alignment. At the location of the proposed Valley Boulevard overhead grade separation, the existing Kaiser spur track will be relocated 346 feet west of its existing alignment.

County is the lead agency for this project under California Environmental Quality Act of 1970 (CEQA), as stated in Public Resources Code Sections 21000 et. seq. County included the proposed Valley Boulevard overhead grade separation in the Environmental Impact Report (EIR) for the Kaiser Commerce Center Specific Plan. The EIR, which was assigned State Clearinghouse (SCH) No. 97091010, was approved on April 13, 1999 and has been certified by the

County. After conducting public hearings on March 4 and March 18, 1999, the County of San Bernardino Planning Commission recommended that the project be approved, that the EIR be certified, and that the Findings and Statement of Overriding Considerations for the impact to air quality and traffic be adopted.

The Commission is a responsible agency for this project under CEQA (Public Resources Code Section 21000 et seq.) and has independently reviewed, assessed, and considered the lead agency's Final EIR. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, to comply with CEQA, a responsible agency must consider the lead agency's EIR or negative declaration prior to acting upon or approving the project (CEQA Guideline 15050(b)). The specific activities, which must be conducted by a responsible agency, are contained in CEQA Guideline Section 15096.

The Commission has reviewed the lead agency's environmental documents for the Kaiser Commerce Center Specific Plan (SCH No. 97091010), prepared for the County of San Bernardino Land Use Services Department. In considering this documentation we note that the EIR developed and evaluated a range of alternatives as well as a No Project Alternative. The EIR included an analysis of potential environmental impacts related to the project and alternatives related to geological hazards, water resources, land use, traffic and circulation, air quality, noise, hazardous materials, light and glare, and public services, utilities, and energy. Safety and security, transportation and noise are within the scope of the Commission's permitting process.

The EIR presented is the entire Kaiser Commerce Center Specific Plan. The Mitigation Monitoring and Compliance Program adopted by the lead agency for the approved project did not identify environmental impacts related to safety and security.

County identified two significant and unavoidable traffic and circulation impacts. An impact of increased number of key intersections is to be mitigated as follows:

- A traffic analysis shall be prepared for each subsequent development within the Specific Plan area. Each analysis shall identify the individual project's fair share cost for all off-site improvements in the Final EIR.
- The project proponent shall pay fair-share of intersection improvements as listed in the Final EIR.
- County maintains accounting of all transportation mitigation fees that are collected. These fees are subsequently segregated by location. In the case of improvements located wholly within the unincorporated areas, the County will use these funds to construct the needed improvements when the traffic and circulation service levels deteriorate beyond acceptable levels and when there are sufficient funds to complete the needed project. In cases where a portion of the roadway improvement is located within both an unincorporated and incorporated area, County will either participate in the needed improvement financially and/or construct the improvement, with the adjacent jurisdiction's concurrence and pro-rata financial participation. In cases where the needed improvement is located wholly outside of the unincorporated area, County will forward all collected mitigation fees to the respective jurisdiction.

The compliance record consists of the following:

- A traffic analysis for future development projects shall identify appropriate key intersection improvements and/or pro-rata contributions to costs of improving affected intersection(s). Each analysis shall be reviewed and approved by the County Transportation/Flood Control Department.
- Traffic impact fees shall be paid by the project proponent to the County Transportation/Flood Control Department in accordance with the pro-rata costs identified in the Final EIR.

Traffic impact fees shall be paid at the appropriate time as determined by the County Transportation/ Flood Control Department for each increment of development.

The increased level of service along specified freeway segments under future conditions reportedly had no feasible mitigation. County adopted two mitigation measures to lessen noise impacts to less-than-significant levels. Impacts would result from major noise sources as well as from I-10 Freeway and major arterials. For the first mitigation measure, implementation and verification consists of the following items:

- New development within the Kaiser Commerce Center Specific Plan area containing outdoor patios and recreational areas shall not be permitted unless noise is attenuated to be less than 65 dBA.
- Site plans proposing outdoor uses shall be submitted to the County Land Use Services Department and the County Building Official for review and approval to demonstrate that noise attenuation can be achieved.

The compliance record consists of the following item:

- Site plans proposing outdoor uses in the vicinity of the Kaiser Commerce Center shall be submitted to the County Land Use Services Department and the County Building Official for review and approval prior to the issuance of building permits.

For the second mitigation measure, implementation and verification consists of the following item:

- Construction plans for on-site buildings adjacent to the I-10 and major arterials shall incorporate noise attenuation measures sufficient to achieve the County's interior noise standards. An acoustical assessment demonstrating attainment of the County noise standards shall be prepared. Construction plans shall be submitted to the County Building Official for review and approval.

The compliance record consists of the following item:

Construction plans and acoustical assessment shall be reviewed and approved by the County Building Official prior to the issuance of building permits.

Under the Mitigation Monitoring and Compliance Program, County is responsible for monitoring and reporting the implementation of the mitigation measures.

The Commission also has reviewed the lead agency's "REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, CALIFORNIA AND RECORD OF ACTION," dated April 13, 1999, concerning "KAISER COMMERCE CENTER SPECIFIC PLAN FOR COMMERCIAL AND INDUSTRIAL USES ON 405 ACRES," et al. The Board of Supervisors documents declared the intent to:

- a. Adopt the Ordinance establishing the Kaiser Commerce Center Specific Plan.
- b. Adopt the Minor General Plan Land Use District Amendment from Regional Industrial to Kaiser Commerce Center Specific Plan on 405 acres, generally located north and east of I-10 Freeway and Etiwanda Avenue.
- c. Approve the Conditional Use Permit to establish a 1276 space truck plaza with fueling and repair services, truck wash, scales, restaurant, retail shops and commercial services, subject to conditions of approval on 76 acres.
- d. Certify the Environmental Impact Report.
- e. Adopt the Findings.
- f. Adopt the Mitigation Monitoring and Compliance Program.
- g. Adopt the Findings and Statement of Overriding Considerations.
- h. File a Notice of Determination.

We note that the Kaiser Commerce Center Specific Plan is located on a portion of the former Kaiser Steel mill site and is within the San Sevaine Redevelopment Plan area. The site is undeveloped except for a large World War

II era warehouse building and an active bail bonds business, which will be removed when development commences.

The Board of Supervisors adopted a Statement of Overriding Considerations (SOC) with respect to significant and unavoidable adverse environmental impacts identified in the EIR related to two specified traffic and circulation impacts, six air quality impacts and the cumulative impacts of the project when combined with other projects in the vicinity. In adopting the SOC, the Board of Supervisors noted several benefits from the proposed project, including that the project:

1. Is an economically viable use of a portion of the former Kaiser Steel Corporation steel mill property.
2. Will transform a marginally productive site and establish a well-balanced and carefully planned community of general transportation-related industrial, commercial and business park uses, which can take advantage of the site's highway and rail access.
3. Offers a unique location immediately adjacent to two major transportation corridors, with immediate freeway access, thereby reducing other potential traffic, safety, noise and air quality impacts.
4. Provides ready access to two main rail lines serving Southern California.
5. Provides onsite availability of slag and aggregate to be used for grading.
6. Will correct an existing traffic safety problem with the use of a substantial amount of private dollars in addition to public funds.
7. Will provide revenues available to the County in excess of those currently available from current uses.
8. Will create approximately 5,200 permanent new jobs in San Bernardino County.

9. Will generate indirect jobs and off-site business activity.

The Board of Supervisors found that the benefits of the proposed project outweigh the unavoidable significant adverse environmental impacts and specifically stated that each of the separate benefits identified in its document was determined to be, in itself and independent of other project benefits, a basis for overriding all unavoidable impacts identified in the EIR and noted in the Board's findings.

In reviewing the EIR, we find that with respect to issues within the scope of our permitting process, feasible mitigation measures were adopted where possible, to lessen the significant environmental impacts to less-than-significant levels. We will adopt the County's findings and mitigations for purposes of our approval.

With respect to the SOC, we find that the Board of Supervisors enumerated several significant benefits associated with the proposed project which appeared, on balance, to reasonably override the unavoidable impacts. Therefore, we accept and adopt the findings of the SOC for purposes of our approval.

The site of the existing Valley Boulevard spur track at-grade crossing and the site of the proposed Valley Boulevard overhead grade separation have been inspected by the Commission's Rail Safety and Carriers Division - Rail Crossings Engineering Section staff. The staff examined the need for and the safety of the proposed Valley Boulevard overhead grade separation and recommends that County's request be granted.

The Application was found to be in compliance under the Commission's filing requirements, including Rule 38 of Rules of Practice and Procedure, which relates to the construction of public highway crossings and separations over a railroad. A site map and detailed drawings of the proposed new bridge and

overhead grade separation structure are shown in Appendix B attached to the order.

In order to ensure that this project be constructed in a timely manner to improve public safety on Valley Boulevard and in the neighboring communities, County wishes to commence construction of this project as soon as possible. It is therefore requested that the usual 30-day effective date of an order be waived. We will make our order effective immediately.

In Resolution ALJ 176-3075, dated November 8, 2001 and published on the Commission Daily Calendar on November 9, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Since no hearings were held, this preliminary determination remains accurate. The Commission's Rail Safety and Carriers Division recommends that this application be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3075.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Notice of the application was published in the Commission Daily Calendar on October 26, 2001. There are no unresolved matters or protests; a public hearing is not necessary.

2. County requests authority, under Public Utilities Code Sections 1201-1205, to construct a new alignment of Valley Boulevard as an overhead at separated grades over a proposed new alignment of a privately owned Kaiser spur track to be operated by UP in San Bernardino County.

3. Closure of the existing Valley Boulevard at-grade spur track crossing, closure of the temporary Valley Boulevard at-grade spur track crossing, and construction of Valley Boulevard overhead grade separation will greatly enhance the safety of the motoring public and train crews and will provide improved vehicular traffic circulation.

4. Public convenience, necessity and safety require construction of Valley Boulevard overhead grade separation over the proposed new alignment of a privately owned Kaiser spur track.

5. Upon completion of Valley Boulevard overhead grade separation over the proposed privately owned Kaiser spur track and its opening to vehicular traffic, the existing Valley Boulevard at-grade crossing at the existing Kaiser spur track and the temporary Valley Boulevard at-grade crossing at the proposed privately owned Kaiser spur track will be closed and vacated as part of this project.

6. County is the lead agency for this project under CEQA, as amended.

7. In approving the project on April 13, 1999, County certified the Final EIR for the Kaiser Commerce Center Specific Plan (State Clearinghouse No. 97091010) of which the proposed Valley Boulevard overhead grade separation is a part. A Statement of Overriding Considerations was adopted in approving the project.

8. The Commission is a responsible agency for this project, and has reviewed, assessed, and considered the lead agency's EIR, Notice of Determination, and the Statement of Overriding Considerations.

9. Safety, security, transportation and noise are within the scope of the Commission's permitting process.

10. For the approved project, the lead agency did not identify environmental impacts related to safety and security.

Conclusions of Law

1. With respect to significant impacts from traffic and circulation and from noise, we find that the lead agency adopted feasible mitigation measures where possible to substantially lessen the impacts to a less-than-significant level. As stated herein, we also accept and adopt the findings in the Statement of Overriding Considerations for purposes of our approval.

2. The usual 30-day effective date on an order should be waived as County wishes to commence construction of the project at the earliest possible date.

3. The application should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. County of San Bernardino (County) is authorized to construct Valley Boulevard overhead at separated grades over a proposed privately owned Kaiser spur track on its new alignment to be operated by Union Pacific Railroad Company (UP) in San Bernardino County, at the location and substantially as shown by plans attached to the Application and Appendix B of this order, identified as Crossing B-528.6-AC.

2. Upon completion of Valley Boulevard overhead grade separation and its opening to vehicular traffic, the existing Valley Boulevard at-grade crossing at the existing Kaiser spur track alignment and the temporary Valley Boulevard at-grade crossing at the proposed privately owned Kaiser spur track alignment shall be closed, vacated, and physically removed.

3. Clearances shall be in accordance with General Order (GO) 26-D.

4. Walkways shall conform to GO 118. Walkways adjacent to any trackage subject to rail operations shall be maintained free of obstructions and shall be

promptly restored to their original condition in the event of damage during construction.

5. Construction and maintenance costs shall be borne in accordance with an agreement to be entered into between the parties. A copy of the agreement, together with plans approved by UP, shall be filed with the Commission prior to commencing construction. Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

6. Within 30 days after completion of the work under this order, County shall notify the Commission in writing that the authorized work has been completed.

7. This authorization shall expire if not exercised within three years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity or safety so require.

8. The application is granted as set forth above.

9. Application 01-10-023 is closed.

This order is effective today.

Dated April 22, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL. W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

APPENDIX A ENVIRONMENTAL DOCUMENT

REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, CALIFORNIA AND RECORD OF ACTION

April 13, 1999

FROM: INA A. PETOKAS, Division Chief
Land Use Services Department/Planning Division

SUBJECT: KAISER COMMERCE CENTER SPECIFIC PLAN FOR COMMERCIAL AND INDUSTRIAL USES ON 405 ACRES; MINOR GENERAL PLAN LAND USE DISTRICT AMENDMENT FROM IR TO KC/SP ON 405 ACRES; CONDITIONAL USE PERMIT TO ESTABLISH A 1276 SPACE TRUCK PLAZA ON 76 ACRES; ENVIRONMENTAL IMPACT REPORT; APPLICANT: KAISER VENTURES, INC.; FILE/INDEX: SP/97-0014/W129-90, GPA/97-0015/W129-90, CUP/W129-97; FONTANA

RECOMMENDATION: 1) **DECLARE AN INTENT TO:** a) **ADOPT** the Ordinance establishing the Kaiser Commerce Center Specific Plan (KCCSP), b) **ADOPT** the Minor General Plan Land Use District Amendment from Regional Industrial (IR) to Kaiser Commerce Center Specific Plan (KC/SP) on 405 acres, generally located north and east of Interstate 10 and Etiwanda Avenue; c) **APPROVE** the Conditional Use Permit (CUP) to establish a 1276 space truck plaza with fueling and repair services, truck wash, scales, restaurant, retail shops and commercial services, subject to conditions of approval on 76 acres; d) **CERTIFY** the Environmental Impact Report; e) **ADOPT** the Findings; f) **ADOPT** the Mitigation Monitoring and Compliance Program; g) **ADOPT** the Findings and Statement of Overriding Considerations; h) **FILE** a Notice of Determination. 2) **CONTINUE** to April 13, 1999, for final adoption with the First Cycle 1999 General Plan Amendments.

BACKGROUND INFORMATION: After conducting public hearings on March 4 and March 18, 1999, the Planning Commission recommended that the project be approved, that the EIR be certified and that the Findings and Statement of Overriding Considerations for the impact to air quality and traffic be adopted. The Commission also recommended revision to CUP Condition #38, the Mitigation Monitoring and Compliance Program mitigation measure GH-4, and the Specific Plan Administrative review section.

The KCCSP is located on a portion of the former Kaiser Steel mill site and is within the San Sevaire Redevelopment Plan area. The highly disturbed site is undeveloped except for a large World War II era warehouse building and an active bail bonds business, which will be removed when development commences.

cc: Land Use Svcs.-Petokas
Planning Division-Coleman
Transportation/Surveyor
Bldg. & Safety
County Counsel-Mordy
Applicant
Representative
File

lv

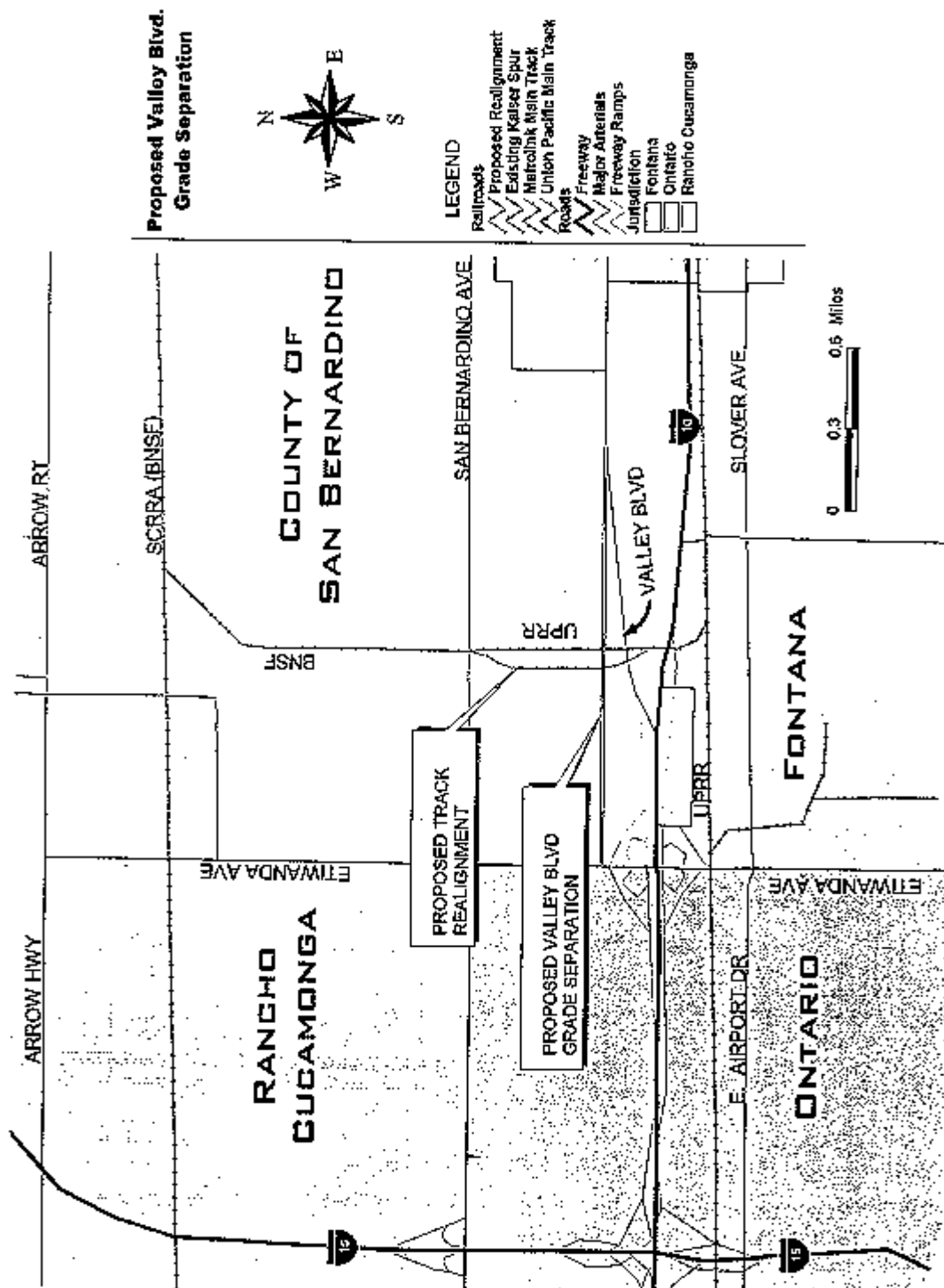
Record of Action of the Board of Supervisors
**CONT. TO ITEM 52E OF 4/13/99 FOR
ADOPTION WITH SUPPLEMENT 1999 GPA'S**

MOTION	SECOND	THIRD	FOURTH	FIFTH	SIXTH	SEVENTH	EIGHTH	NINTH	TENTH	ELEVENTH	TWELFTH	THIRTEENTH	FOURTEENTH	FIFTEENTH	SIXTEENTH	SEVENTEENTH	EIGHTEENTH	NINETEENTH	TWENTIETH	TWENTY-FIRST	TWENTY-SECOND	TWENTY-THIRD	TWENTY-FOURTH	TWENTY-FIFTH	TWENTY-SIXTH	TWENTY-SEVENTH	TWENTY-EIGHTH	TWENTY-NINTH	THIRTIETH	
EARLENE SPONTON, CLERK OF THE BOARD																														
BY <i>[Signature]</i>																														
DATED: April 13, 1999																														

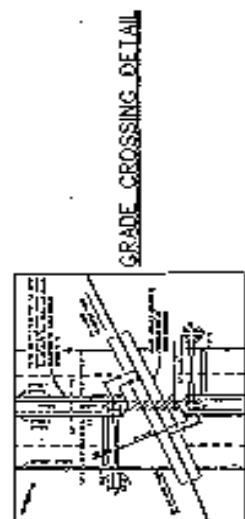
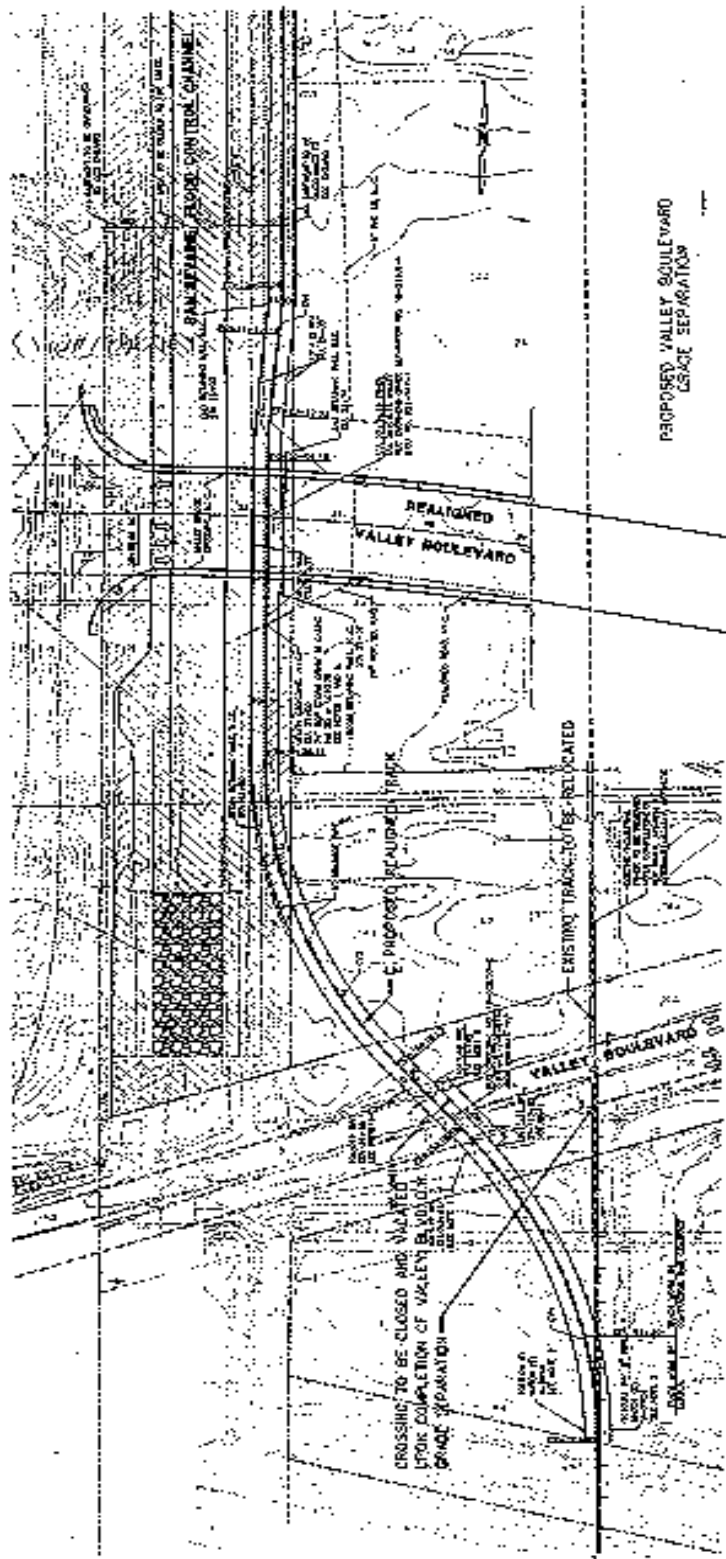
SAN BERNARDINO COUNTY

APPENDIX B

PLANS



PLANS



PLANS

